

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
W. R. GRACE & CO., et al.,) Case No. 01-01139 (JKF)
Debtors.) (Jointly Administered)
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MOTION TO SHORTEN NOTICE

The Official Committee of Property Damage Claimants (the "PD Committee"), by and through its undersigned counsel, respectfully moves (the "Motion") this Court, pursuant to Del. Bankr. LR 9006-1(e), Rule 9006(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Section 102 of Title 11 of the United States Code (the "Bankruptcy Code"), for an Order shortening the notice period with respect to the *Application Of The Official Committee Of Asbestos Property Damage Claimants To Retain Special Counsel Pursuant To Sections 328 And 1103 Of The Bankruptcy Code And Bankruptcy Rule 2014* (the "Application"), filed on September 12, 2005, and for leave from this Court's *Order Scheduling Omnibus Hearing Dates for 2005* (Docket No. 6833) (the "Scheduling Order"), dated November 5, 2004, so that the Application may be heard at the September 26, 2005 omnibus hearing scheduled in the above-referenced bankruptcy cases.

Bankruptcy Rule 9006(c) provides that when an act is required to be done within a specified time by the Bankruptcy Rules "the court for cause shown may in its discretion

with or without motion or notice order the period reduced." Similarly, Del. Bankr. LR 9006-1(e) provides in pertinent part that "[n]o motion will be scheduled on less notice than required by these Rules or the Fed. R. Bankr. P. except by Order of the Court, on written motion . . . specifying the exigencies justifying shortened notice."

Pursuant to the Scheduling Order, motions to be heard at the September 26, 2005 omnibus hearing were to be filed on or before August 22, 2005. See Scheduling Order. Objections to the Application were to be filed on or before September 9, 2005.

Accordingly, the PD Committee files this Motion seeking an Order of this Court for leave of the Scheduling Order and shortening the notice period prescribed by Del. Bankr. LR 9006-1(c) to have the Application heard at the next omnibus hearing on September 26, 2005 at 12:00 p.m. The PD Committee also respectfully requests that the Court establish September 21, 2005 at 4:00 p.m. as the deadline to object to the Application.

CAUSE EXISTS TO GRANT THE MOTION TO SHORTEN NOTICE

On August 29, 2005, the Court entered the *Case Management Order for the Estimation of Asbestos Property Damage Liabilities* (the "CMO"). The CMO creates two phases in respect of the estimation (the "PD Estimation") of property damage claims (the "PD Claims"). Phase I concerns two issues, *Daubert* methodology and constructive notice. Phase II consists of the merits-based estimation of PD Claims.

Pursuant to the CMO, the PD Committee is required to perform the following tasks in short order with respect to the PD Estimation:

(a) By October 17, 2005, the PD Committee must submit a brief (the "Methodology Brief") to address whether the *Daubert* methodology issue should be heard by the Court as part of Phase I, Phase II, or not at all;

(b) By October 31, 2005, the PD Committee must file a response to the Debtors' brief (the "Constructive Notice Brief") to address whether the constructive notice issue should be addressed by the Court via summary judgment motion, Rule 502(c) estimation, or in some other procedural context, which brief is to be filed by the Debtors by October 17, 2005;

(c) On November 14, 2005, the PD Committee will argue the merits in respect of both the Constructive Notice Brief and the Methodology Brief before the Court.

In addition to the foregoing tasks requiring the PD Committee's immediate attention, fact discovery with respect to both Phase I and Phase II of the PD Estimation has already commenced in accordance with the CMO and other critical deadlines are on the near horizon, including the disclosure of fact and expert witnesses.

Without affording the PD Committee a shortened notice period with respect to the Application, the PD Committee will be unable to bring the Application before the Court until the October 24, 2005 omnibus hearing. The October omnibus hearing, however, will not occur until after the PD Committee is required to file its Methodology Brief and in the midst of earnest preparation in responding to the Debtors' Methodology Brief. Further, Court approval of the Application at the October omnibus hearing will provide special counsel with only three weeks to facilitate the PD Committee's preparation for trial in respect of these issues, not to mention significantly reduce the time necessary to ramp up to speed special counsel on other significant events with abbreviated scheduling deadlines. Such circumstances provide sufficient cause for shorting the notice period requested herein.

The PD Committee firmly believes that it is in the best interests of the PD Claimants for the Court to hear and approve the Application at the September omnibus hearing so that the PD Committee may maximize the benefits afforded by special

counsel's unique understanding (as more fully set forth in the Application) of the complex estimation issues that will soon be before the Court, including, in particular, special counsel's wealth of experience in respect of the Phase I *Daubert* methodology issue.

In light of these circumstances, the PD Committee respectfully submits that: (i) sufficient cause exists for the reduction of the notice period proposed hereby and (ii) no party in interest will be prejudiced if the notice period is shortened as requested herein.

WHEREFORE, the PD Committee respectfully requests the entry of an order shortening the time for notice and providing such other and further relief as is just and proper.

Dated: September 12, 2005

FERRY, JOSEPH & PEARCE, P.A.

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The Application is hereby scheduled to be heard at the September 26, 2005 omnibus hearing.

Any objections to the Application must be filed and served so as to be received by September 21, 2005 at 4:00 p.m.

SO ORDERED this day
of September, 2005

The Honorable Judith K. Fitzgerald
United States Bankruptcy Judge